

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION - CINCINNATI**

ELISE SPEARS,	:	Case No. 1:23-cv-495
	:	
Plaintiff,	:	Judge Matthew W. McFarland
	:	
v.	:	
	:	
AMERICAN STRATEGIC	:	
INSURANCE CORP., et al.,	:	
	:	
Defendants.	:	

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**ORDER DISMISSING SEEK NOW'S  
THIRD-PARTY COMPLAINT WITHOUT PREJUDICE**

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This matter is before the Court sua sponte. On March 7, 2024, Defendant Seek Now, Inc. filed a Third-Party Complaint against Dallas Strasser. (*See* Third-Party Complaint, Doc. 20.) On August 9, 2024, the Court ordered Seek Now to show cause why the Third-Party Complaint should not be dismissed for failure of service. (*See* Order to Show Cause, Doc. 22.) In response, Seek Now explained that it had unsuccessfully attempted to serve Strasser through certified mail and would attempt service again. (*See* Response, Doc. 23.) On December 12, 2024, the Court ordered Seek Now to show cause for a second time why the Third-Party Complaint should not be dismissed. (*See* Second Order to Show Cause, Doc. 24.) Seek Now has not responded to the Second Order to Show Cause, and the record contains no indication of service or that Strasser waived service. Additionally, the docket does not reflect certified mailings by the Clerk. *See* S.D. Ohio Civ. R. 4.2.

"Plaintiff bears the burden of exercising due diligence in perfecting service of process and in showing that proper service has been made." *Beyogrides v. Montgomery Cnty. Sheriff*, 166 F. Supp. 3d 915, 917 (S.D. Ohio 2016) (citations omitted); *see also* Fed. R. Civ. P. 4(l)(1).

Federal Rule of Civil Procedure 4(m) provides, in pertinent part:


If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Courts have looked to this deadline when considering a party's obligation to serve third-party defendants. *See, e.g., City of Dayton v. A.R. Env't, Inc.*, No. 3:11-CV-383, 2012 WL 6923584, at \*1 (S.D. Ohio Oct. 12, 2012); *Berg Corp. v. C. Norris Mfg., LLC*, No. 5:20-CV-2297, 2021 WL 915895, at \*2 (N.D. Ohio Mar. 10, 2021).

Accordingly, in light of Seek Now's failure to serve Strasser or to otherwise respond to the Second Order to Show Cause, Seek Now's Third-Party Complaint against Dallas Strasser is hereby **DISMISSED WITHOUT PREJUDICE**.

**IT IS SO ORDERED.**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO

By:   
JUDGE MATTHEW W. McFARLAND